

§ 107.1160

13 CFR Ch. I (1–1–09 Edition)

will publish the indexed maximum Leverage amounts each year in a Notice in the FEDERAL REGISTER.

(b) *Exceptions to maximum Leverage provisions*—(1) *Licensees under Common Control*. Two or more Licensees under Common Control may have aggregate outstanding Leverage over \$105,200,000 (subject to indexing as set forth in paragraph (a)(2) of this section) only if SBA gives them permission to do so. SBA may grant such permission on a case-by-case basis only. SBA may impose any terms and conditions SBA considers appropriate to minimize its risk of loss in the event of default.

(2) *Licensees with excess Leverage issued before March 31, 1993*. If you had outstanding Debentures on March 31, 1993 that exceeded 300 percent of your Leverageable Capital:

(i) You do not have to prepay the excess amount.

(ii) You may apply for an additional Debenture guarantee or Participating Security guarantee if you use the proceeds solely to pay the amount due at maturity on a Debenture issued before March 31, 1993. The new Debenture or Participating Security must mature on or before September 30, 2002.

(iii) You must maintain at least 65 percent of your “Total Funds Available for Investment” in “Venture Capital Financings” (as defined in §107.1160(e) and (f), respectively) until your outstanding Debentures no longer exceed 300 percent of your Leverageable Capital.

(3) *Maximum amount of Participating Securities*. See §107.1170.

[61 FR 3189, Jan. 31, 1996, as amended at 64 FR 70996, Dec. 20, 1999]

§ 107.1160 Maximum amount of Leverage for a Section 301(d) Licensee.

This section applies to Leverage issued by a Section 301(d) Licensee on or before September 30, 1996. Effective October 1, 1996, a Section 301(d) Licensee may apply to issue new Leverage, or refinance existing Leverage, only on the same terms permitted under §107.1150.

(a) *Maximum amount of subsidized Leverage*. (1) “Subsidized Leverage” means Debentures with a reduced interest rate and Preferred Securities. If you are a Section 301(d) Licensee:

(i) The maximum amount of subsidized Leverage you may have outstanding at any time is the lesser of 400 percent of your Leverageable Capital, or \$35,000,000. The same limit applies to a group of Section 301(d) Licensees under Common Control.

(ii) The maximum amount of Preferred Securities you may have outstanding at any time is 200 percent of your Leverageable Capital.

(2) Certain types and amounts of subsidized Leverage have special eligibility requirements (see paragraphs (c) and (d) of this section).

(b) *Maximum amount of total Leverage*. Use §107.1150 (a) and (b)(1) to determine your maximum amount of Leverage as if you were a Section 301(c) Licensee. If the result is more than your maximum subsidized Leverage, then this is your maximum total (subsidized plus non-subsidized) Leverage. Otherwise, your maximum total Leverage is the same as your maximum subsidized Leverage. For Participating Securities, see §107.1170.

(c) *Special eligibility requirements for fourth tier of Leverage*. A “fourth tier of Leverage” is any amount of outstanding Leverage in excess of 300 percent of your Leverageable Capital.

(1) To qualify for a fourth tier of Leverage, you must have invested (or have Commitments to invest) at least 30 percent of your “Total Funds Available for Investment” in “Venture Capital Financings” (see the definitions in paragraphs (e) and (f) of this section).

(2) While you have a fourth tier of Leverage, you must maintain Venture Capital Financings (at cost) that equal at least 30 percent of your Total Funds Available for Investment.

(d) *Special eligibility requirements for second tier of Preferred Securities*. A “second tier of Preferred Securities” is any amount of outstanding Preferred Securities in excess of 100 percent of your Leverageable Capital.

(1) To qualify for a second tier of Preferred Securities:

(i) If your license was issued after October 13, 1971, you must have at least \$500,000 of Leverageable Capital.

(ii) You must have invested (or have Commitments to invest) at least the same dollar amount in Venture Capital Financings.

Small Business Administration

§ 107.1220

(2) While you have a second tier of Preferred Securities, you must maintain at least the same dollar amount of Venture Capital Financings (at cost).

(e) *Definition of "Total Funds Available for Investment"*. Total Funds Available for Investment means the result obtained from the following formula:

$$T = .90 \times (CA + LI)$$

Where:

T = Total funds available for investment

CA = Total current assets

LI = Total Loans and Investment at cost (as reported on SBA Form 468), net of current maturities

(f) *Definition of "Venture Capital Financing"*. Venture Capital Financing means an investment represented by common or preferred stock, a limited partnership interest, or a similar ownership interest; or by an unsecured debt instrument that is subordinated by its terms to all other borrowings of the issuer.

(1) A debt secured by any agreement with a third party is not a Venture Capital Financing, whether or not you have a security interest in any asset of the third party or have recourse against the third party.

(2) A Financing that originally qualified as a Venture Capital Financing will continue to qualify (at its original cost), even if you later must report it on SBA Form 468 under either Assets Acquired in Liquidation of Portfolio Securities or Operating Concerns Acquired.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998]

§ 107.1170 Maximum amount of Participating Securities for any Licensee.

The maximum amount of Participating Securities you may have outstanding at any time is 200 percent of your Leverageable Capital. If you are a Section 301(d) Licensee, the maximum combined amount of Participating Securities and Preferred Securities you may have outstanding at any time is 200 percent of your Leverageable Capital.

CONDITIONAL COMMITMENTS BY SBA TO RESERVE LEVERAGE FOR A LICENSEE

§ 107.1200 SBA's Leverage commitment to a Licensee—application procedure, amount, and term.

(a) *General*. Under the provisions in §§ 107.1200 through 107.1240, you may apply for SBA's conditional commitment to reserve a specific amount and type of Leverage for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment*. SBA will notify you when it is accepting requests for Leverage commitments. Upon receipt of your request, SBA will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment*. The amount of a Leverage commitment must be a multiple of \$5,000.

(d) *Term of Leverage commitment*. SBA's Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by SBA.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998]

§ 107.1210 Payment of leverage fee upon receipt of commitment.

(a) *Partial prepayment of leverage fee*. As a condition of SBA's Leverage commitment, and before you draw any Leverage under such commitment, you must pay to SBA a non-refundable fee equal to 1 percent of the face amount of the Debentures or Participating Securities reserved under the commitment. This amount represents a partial prepayment of the 3 percent leverage fee established under § 107.1130(a).

(b) *Automatic cancellation of commitment*. Unless you pay the fee required under paragraph (a) of this section by 5:00 P.M. Eastern Time on the 30th calendar day following the issuance of SBA's Leverage commitment, the commitment will be automatically canceled.

[63 FR 5868, Feb. 5, 1998]

§ 107.1220 Requirement for Licensee to file quarterly financial statements.

As long as any part of SBA's Leverage commitment is outstanding, you must give SBA a Financial Statement